IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/01/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ petition No. 45580 of 2002
and
W.P.M.P.Nos.66526 and 66527 of 2002

Aruna Theatre,
represented by its proprietor
Arunachalam, Ottanchathiram Taluk,
Dindigul District. .. Petitioner.

-Vs-

1. The Secretary to Government,
Home (Cinema II) Department,
Fort St. George, Chennai-9.

2. The Appellate Authority/
Additional Commissioner (Cinema),
Chepauk, Chennai-5.

3. The District Collector,
Dindigul District, Dindigul. .. Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, as stated therein.

For petitioner:- Mr. V. Kathiravan.

For respondents:- Mr. S. Venkatesh, Addl.
Govt., Pleader.

:ORDER

Aggrieved by the order of the first respondent dated 29-11-2002, confirming the orders of the respondents 2 and 3, dated 29-7 -2002 and 6-5-2002 respectively suspending C form licence of the petitioner theatre for a period of 30 days, the petitioner-Aruna Theatre, Ottanchathiram has preferred the above writ petition.

2. The case of the petitioner is briefly stated hereunder:
According to the proprietor of the petitioner theatre, he obtained licence

under the Tamil Nadu Cinema Regulation Act to run the theatre called Aruna Theatre and running the same for quite number of years. The Ottanchathiram Police foisted a criminal case in Crime No.719/98 for offence under Section 7(a)(i) of the Tamil Nadu Cinematograph Act and the Rules thereon. The case of the prosecution is that on 6-9-98 at about 10-30 P.M., the police authorities inspected the cinema theatre and in the inspection they said to have found obscene films shown as interpolation to the cinema called "Muthalamaichar Vaijayanthi". Since the said cinema was already approved by the Censor Board, there cannot be any interpolation by the petitioner and the police have falsely implicated him in the criminal case. After registration of the criminal case, the third respondent-District Collector issued a show cause notice to the petitioner inviting objections for the proposed action under Section 9(2)(b) of the Cinema Regulation Act, for which he made detailed representation stating that there was no interpolation and the criminal case made against him is false, fabricated one and pleaded innocence in the said proceedings. It is further stated that the third respondent without considering his explanation, on erroneous application of mind, imposed penalty of suspension of C form licence for one month from 4-6-2002 to 3-7-2002. The said order was challenged before the 2nd respondent and the appellate authority dismissed the said appeal, by order dated 29-11-2002. Therefore, the petitioner preferred a revision to the first respondent on 19-8-2002 and the same was also dismissed on 29-11-2002. Having no other remedy, filed the present writ petition c hallenging all the 3 orders before this Court.

3. Learned Additional Government Pleader takes notice for the respondents.

4. Heard the learned counsel for the petitioner as well as respondents.

5. Mr. V. Kathiravan, learned counsel for the petitioner, after taking me through the orders of original, appellate and revisional authority imposing penalty of suspension of C form licence for a period of 30 days, has raised the following contentions:

i) The criminal case filed by the police is still pending on the file of the Judicial Magistrate-No.I, Dindigul in C.C.No.260/200 1, hence the impugned order of the third respondent is pre-matured and he ought not to have issued proceedings on the basis of First information Report which was not concluded by the criminal court;

ii) The third respondent failed to furnish copy of the letter of the Regional Censor Board dated 17-2-99; hence the third respondent committed an error in relying on the said letter and arriving a conclusion that the petitioner has violated the licence conditions;

iii) Both appellate and revisional authorities committed the same error in not considering those objections and confirming the order of the third respondent.

6. It is seen from the materials placed that the petitioner, after obtaining valid licence under the provisions of the Tamil Nadu Cinema Regulation Act, is running the theatre called Aruna Theatre. It is further seen that on 6-9-98 at about 10-35 p.m. the police made a surprise inspection and found obscene

films shown as interpolation to the cinema called 'Muthalamaichar Vaijayanthi'. The obscene films were seized and a case was registered by the police in Crime No.719/98 and as a follow up action, the criminal case is pending on the file of the Judl.Magistrate-No.I, Dindigul in C.C.No.260/2001 for an offence under Section 7(a)(i) of Tamil Nadu Cinematograph Act and the Rules. Though it is stated that in view of the fact that the criminal case filed against the petitioner is still pending, as rightly observed by the authorities that the petitioner is facing criminal prosecution for the criminal offence committed by him and the third respondent-District Collector licensing authority is competent to take action for violation of licence condition by exhibiting obscene films. There is no dispute that petitioner is expected to follow the licence conditions and for violation or deviation, the licencing authority is competent to take appropriate action, like suspension/ cancellation of licence. In such a circumstance, merely because the criminal case is still pending before the Judicial Magistrate's Court, it cannot be contended that the licencing authority has no power to take action for violation of the licence conditions, accordingly, the first contention is liable to be rejected.

7. Coming to the second contention that the petitioner exhibited the film certified by the Censor Board and in the absence of copy of the report/letter of the Regional Censor Board dated 17-2-1 999, the suspension of C form licence cannot be sustained, it is seen from the materials that on surprise inspection, after noticing that obscene film is being shown along with the Tamil film called ' Muthalamaichar Vaijayanthi', the same was seized in the presence of the proprietor of the petitioner and he was arrested by the police. The seizure was effected in the presence of 2 witnesses, namely, Village Administrative Officer and Village Assistant and mahazar has been prepared, wherein it is clearly stated that obscene film to an extent of 50 0 feet has been seized from the petitioner theatre; accordingly the claim of the petitioner that he had not shown any obscene film cannot be accepted. Further, after seizure and after registering the case, the obscene film was sent to the Censor Board for verification. The Regional Officer of the Censor Board, after ve rification and examination, by letter dated 17-2-1999, confirmed that the obscene film was not certified by them and shown by the petitioner by interpolating the same along with the cinema called 'Muthalamaichar Vaijayanthi'. Though the communication of the Regional Director has not been furnished to the petitioner, in view of the fact that the obscene film was seized by mahazar in the presence of the petitioner and other two witnesses, I am of the view that the petitioner is no way prejudiced. Even otherwise, it cannot be accepted that the Censor Board certified the Tamil film 'Muthalamaichar Vaijayanthi' along with the obscene film which was seized at the petitioner's theatre; accordingly the second contention is also liable to be rejected.

8. With regard to quantum of punishment, I feel if this trend is allowed to continue and if the theatre owners indulge in showing such obscene films by interpolation of the regular certified films, undoubtedly it will stimulate the sexual feelings of the youngsters, and paving way for them to go in a wrong path, thus there will be a social disaster in the long run. This evil has to be curbed by imposing severe punishment. Hence, the punishment of

suspension of C Form licence for 30 days cannot be said t o be either excessive or unreasonable.

9. In the light of what is stated above, I do not find any error or infirmity in the impugned order of the respondents; consequently the writ petition fails and the same is dismissed. Consequently, W.P.M.P.Nos.66526 and 66527/2002 are also dismissed.

R.B.

To:-
1. The Secretary to Government,
Home (Cinema II) Department,
Fort St. George, Chennai-9.

2. The Appellate Authority/
Additional Commissioner (Cinema),
Chepauk, Chennai-5.

3. The District Collector,
Dindigul District, Dindigul.